

CALIFORNIA STATE PERSONNEL BOARD MEETING
801 Capitol Mall
Sacramento, California

Public Session Location - Room 150
Closed Session Location - Room 141

MID-MONTH BOARD MEETING MINUTES**

OCTOBER 21, 2003

PUBLIC SESSION OF THE STATE PERSONNEL BOARD

1. ROLL CALL

BOARD MEMBERS PRESENT:

William Elkins, President
Ron Alvarado, Vice President
Maeley Tom, Member

2. REPORT OF THE EXECUTIVE OFFICER - Walter Vaughn

The Board was advised of the following:

- A. Walter Vaughn, State Personnel Board Executive Officer, announced his pending retirement after more than 33 years of state service.
- B. The Board Members were provided copies of the documents prepared for the Transition Team.

** The State Personnel Board Summary Minutes can be obtained at the following Internet address:
<http://www.spb.ca.gov/calendar.htm>

3. REPORT OF THE CHIEF COUNSEL - Elise Rose

The Chief Counsel reported on the following:

- A. Association of California State Attorneys & Administrative Law Judges v. Department of Personnel Administration - The Board will file a response to the Petitions for Review with the Supreme Court this week.
- B. State Personnel Board v. Department of Personnel Administration - Oral argument has been scheduled in the Court of Appeal for November 17, 2003 at 2:00 p.m.
- C. Esquivel v. California Department of Corrections (CDC)/Alameda v. State Personnel Board - Trial court in San Bernardino upheld the Board's decision in this case revoking the dismissal and granted the appellant's petition for a writ compelling CDC to reinstate the appellant and pay him back pay, interest and benefits.
- D. State Personnel Board's (SPB) State Employee Mediation Program - Informational seminar scheduled at SPB for October 22, 2003 in Room 150.

4. NEW BUSINESS

- A. State Personnel Board President, Bill Elkins, appointed Members Maeley Tom (Chair) and Ronald Alvarado to serve on a search committee to direct the procedures for the selection of a new Executive Officer.

5. REPORT ON LEGISLATION - Sherry Hicks

NO REPORT

BOARD ACTIONS

6. STATE PERSONNEL BOARD SUMMARY MINUTES OF OCTOBER 7, 2003

ACTION: Adopted on October 21, 2003

VOTE: Elkins, Alvarado, Tom - Aye.

6. ADMINISTRATIVE LAW JUDGE CASES

On October 21, 2003, the Board adopted the following decisions presented by Elise Rose, Chief Counsel, California State Personnel Board.

VOTE: Elkins, Alvarado, Tom - Aye.

PROPOSED DECISIONS

JAMES ADAZA, CASE NO. 03-1170
Appeal from demotion
Youth Correctional Counselor
Department of the Youth Authority
ACTION: Demotion sustained

TIMOTHY BOBITT, CASE NO. 02-2856
Appeal from suspension
Senior Special Agent in Charge
Department of Justice at Sacramento
ACTION: Administrative Law Judge's proposed decision
rejected by Board - Board to decide case itself

PHYLLIS COLE, CASE NO. 03-1865
Appeal from 60 days suspension
Psychiatric Technician
Department of Developmental Services
ACTION: Suspension sustained

DAN GIBSON, CASE 03-1535
Appeal from dismissal
Correctional Officer
Centinela State Prison - Imperial
Department of Corrections
ACTION: Dismissal sustained

JEREMIAS GONZALEZ, CASE NO. 02-2412E
Appeal from discrimination and retaliation
Supervising Cook I
Central California Women's Facility - Chowchilla
Department of Corrections
ACTION: Discrimination and retaliation complaint denied

MAMIE JONES, CASE NO. 02-4441
Appeal from ten percent reduction
in salary for five months
Dispatcher Clerk
Department of Transportation
ACTION: Administrative Law Judge's proposed decision
rejected by Board - Board to decide case itself

YEVGENIY (EUGENE) NEYMAN, CASE NO. 01-2967
Appeal from rejection during probationary period
Staff Programmer Analyst (Specialist)
Board of Equalization
ACTION: Rejection during probationary period sustained

SHIRLEY SCOTT, CASE NO. 02-2968
Appeal from demotion
Office Technician (Typing)
Department of Insurance
ACTION: Administrative Law Judge's proposed decision
rejected by Board - Board to decide case itself

SAMUEL SWEENEY, CASE NO. 03-1871
Appeal from five percent reduction in salary for six months
Correctional Officer
California Institution for Men - Chino
Department of Corrections
ACTION: Five percent reduction in salary for six months
modified to a five percent reduction in salary for three
months

BEVERLY WILSON, CASE NO. 03-1150
Appeal from dismissal
Administrative Support Assistant II
California State University
ACTION: The Board took this matter under submission

YVONNE YOUNG, CASE NO. 03-1644
Appeal from ten percent reduction
in salary for twelve months
Fire Captain AND HOWARD YOUNG, CASE
NO.03-1890
Correctional Sergeant
Pleasant Valley State Prison - Coalinga
Department of Corrections
ACTION: Ten percent reductions in salary for twelve months
revoked

PETITIONS FOR REHEARING

ANTHONY CASTRO, CASE NO. 03-0520P
Appeal from Dismissal
Janitor
California Highway Patrol
ACTION: Petition for rehearing filed by appellant denied

JOSEPH ISAACS, CASE NO. 02-1152P

Appeal from Dismissal
Youth Correctional Officer
Department of the Youth Authority
ACTION: Petition for rehearing filed by appellant denied

MADHUP JOSHI M.D., CASE NO. 02-2502P
Appeal of Whistleblower Retaliation
Health Care Manager
California State Prison - Solano
California Department of Corrections
ACTION: Petition for rehearing filed by appellant denied

EDDIE LAU, CASE NO. 02-0875P
Appeal of Whistleblower Retaliation
Utility Engineer
California Public Utilities Commission
ACTION: Petition for rehearing filed by appellant denied

JOSE PROVENCIO, CASE NO. 02-3318P
Appeal from ten percent reduction in salary
for six months
Youth Correctional Counselor
Department of the Youth Authority
ACTION: Petition for rehearing filed by appellant denied

7. RESOLUTION EXTENDING TIME UNDER GOVERNMENT CODE SECTION 18671.1 EXTENSION. (See Minute Page 14-15)

8. WITHHOLD APPEALS
On October 21, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Tom - Aye.

KENNETH BERTRAND, CASE NO. 02-3396
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

CLAYTON BOLIN, CASE NO. 03-0231
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

FREDRICK BROOKS, CASE NO. 02-4253

Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

CHRIS CAMACHO, CASE NO. 02-3919
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

NEIL CHAPMAN, CASE NO. 03-0596
Classification: Youth Correctional Counselor
California Youth Authority
ACTION: GRANTED

ANDRA DAVIS, CASE NO. 02-4250
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

CHARLES JOLLY, CASE NO. 02-4368
Classification: Correctional Officer
Department of Corrections
ACTION: GRANT

KEVIN KNOTT, CASE NO. 02-4345
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DUSTIN MATTOS, CASE NO. 03-0082
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

MARLON MAYO, CASE NO. 03-0081
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

DEANNA NICHOLS, CASE NO. 03-0388
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DANIEL SOTO, CASE NO. 03-0320
Classification: Youth Correctional Officer
California Youth Authority
ACTION: DENIED

JUAN VILLEGAS, CASE NO. 03-0486

Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

PAUL WILSON, CASE NO. 03-0027
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

BRADLEY WOLST, CASE NO. 03-0023
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

9. MEDICAL APPEALS

On October 21, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.
VOTE: Elkins, Alvarado, Tom - Aye.

WILLIAM BREWSTER, CASE NO. 03-0539
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

DIANA CERVANTES, CASE NO. 03-1436
Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

JUAN ESPINOZA, CASE NO. 03-0226
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

DALE FUGATE, CASE NO. 03-1784
Classification: Correctional Officer
Department of Corrections
ACTION: DENIED

TRAVIS GEE, CASE NO. 03-0131
Classification: State Park Ranger Cadet
Department of Parks and Recreation
ACTION: GRANTED

JUSTIN LOTZ, CASE NO. 03-0730

Classification: Cadet, CHP
California Highway Patrol
ACTION: DENIED

10. PSYCHOLOGICAL SCREENING CASES

On October 21, 2003, the Board adopted the following decisions presented by Laura Aguilera, Assistant Executive Officer, California State Personnel Board.

VOTE: Elkins, Alvarado, Tom - Aye.

ANTHONY BOLOURI-RAD, CASE NO. 03-1974
Classification: Correctional Officer
Department of Corrections
ACTION: GRANTED

JOHN MCINTOSH, CASE NO. 03-2501
Classification: Cadet, CHP
California Highway Patrol
ACTION: GRANTED

11. CAREER EXECUTIVE ASSIGNMENT (CEA) CATEGORY ACTIVITY

A. REQUESTS TO ESTABLISH NEW CEA POSITIONS CURRENTLY UNDER CONSIDERATION

(1) SPECIAL ASSISTANT BOND FINANCING, DIVISION OF FINANCIAL ASSISTANCE

The State Water Resources Control Board proposed to allocate the above position to the CEA category. The Special Assistant Bond Financing is responsible for providing high-level direction and oversight on all administrative and procedural activities of the State Revolving Fund relating to revenue bond proceeds, revenue bond sales, and interagency coordination.

(2) ASSISTANT SECRETARY, PROGRAM INTEGRATION AND POLICY DEVELOPMENT

The Employment Development Department proposes to allocate the above position to the CEA category and deploy the position to the Labor and Workforce Development Agency. The Assistant Secretary, Program Integration and Policy Development formulates, analyzes, revises, interprets, and evaluates programs and fiscal policies for the Employment Development Department (EDD) under the jurisdiction of the Labor and Workforce

Development Agency. In addition this position is responsible for identifying program areas that can be integrated and coordinate policy development among programs and services administered by EDD and DIR.

B. EXECUTIVE OFFICER DECISIONS REGARDING REQUESTS TO
ESTABLISH NEW CEA POSITIONS

- (1) DEPUTY COMMISSIONER, OFFICE OF COMMUNICATION
The Department of Insurance's request to establish the above position to the CEA category has been approved effective September 26, 2003.
- (2) DEPUTY DIRECTOR OF EXECUTIVE OPERATIONS
The Department of Motor Vehicles' request to establish the above position to the CEA category has been disapproved effective August 18, 2003.
- (3) PRINCIPAL DEPUTY LEGISLATIVE COUNSEL III
The Legislative Counsel Bureau's request to establish the above position to the CEA category has been approved effective September 25, 2003.

ACTION: Noted

A D J O U R N M E N T

SUBMITTED

1. TEACHER STATE HOSPITAL (SEVERLY), ETC. Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

2. VOCATIONAL INSTRUCTOR (SAFETY) (VARIOUS SPECIALTIES). Departments of Mental Health and Developmental Services. (Hearing held December 3, 2002).

NO ACTION

3. ANSWERS OR APPEALS FILED WITH STATE PERSONNEL BOARD
State Personnel Board (SPB) staff is proposing to adopt new Rule 63 to require, in part, that answers or appeals filed with SPB, requesting that a hearing or investigation be conducted by SPB, notify the responding party of all planned affirmative defenses and requests for relief. (Hearing held February 3, 2003).

NO ACTION

4. TELEVISION SPECIALIST (SAFETY)
The Department of Corrections proposes to establish the new classification Television Specialist (Safety) by using the existing Television Specialist class specification and adding "Safety" as a parenthetical to recognize the public aspect of their job, additional language will be added to the Typical Tasks section of the class specification and a Special Physical Characteristics section will be added. (Presented to Board March 4, 2003).

NO ACTION

5. LAWRENCE SCHAEFER, CASE NO. 02-0079. Appeal from 60 calendar days suspension and position reassignment AND HARRY MILLER, CASE NO. 02-0160. Appeal from demotion and position reassignment. Department of Corrections. (Hearing held June 3, 2003).

NO ACTION

6. BENJAMIN JOHNSON, CASE NO. 02-2700. Appeal from five-percent reduction in salary for six months. Department of Corrections. (Written testimony presented to Board September 9, 2003).

NO ACTION

7. PSC NO. 03-04
Appeal of the California Department of Education and McGeorge School of Law from the Executive Officer's April 30, 2003, disapproval of a contract for special education mediation conferences and due process hearings.
(Hearing held October 7, 2003).

NO ACTION

8. ADREIN SMITH, CASE NO. 02-0896A. Appeal from non-punitive termination. Department of Corrections. (An oral argument was scheduled for October 7, 2003, but not held as the appellant and appellant's representative did not show. The Department of Corrections submitted written testimony).

NO ACTION

9. MOUNZER NAJJAR, CASE NO. 02-3417. Appeal from non-punitive termination. Department of Transportation. Petition for rehearing filed by appellant granted April 8, 2003. It is in abeyance waiting for the Torossian case to be decided by Full Board. Cases have been briefed and are under submission.
10. ZEWDIE SENBETU, CASE NO. 02-1955. Appeal from non-punitive termination. Department of Transportation. Petition for rehearing filed by appellant granted April 8, 2003. It is in abeyance waiting for the Torossian case to be decided by Full Board. Cases have been briefed and are under submission.

NOTICE OF GOVERNMENT CODE § 18671.1 RESOLUTION

Since Government Code section 18671.1 requires that cases pending before State Personnel Board Administrative Law Judges (ALJ's) be completed within six months or no later than 90 days after submission of a case, whichever is first, absent the publication of substantial reasons for needing an additional 45 days, the Board hereby publishes its substantial reasons for the need for the 45-day extension for some of the cases now pending before it for decision.

An additional 45 days may be required in cases that require multiple days of hearings, that have been delayed by unusual circumstances, or that involve any delay generated by either party (including, but not limited to, submission of written briefs, requests for settlement conferences, continuances, discovery disputes, pre-hearing motions). In such cases, six months may be inadequate for the ALJ to hear the entire case, prepare a proposed decision containing the detailed factual and legal analysis required by law, and for the State Personnel Board to review the decision and adopt, modify or reject the proposed decision within the time limitations of the statute.

Therefore, at its next meeting, the Board will issue the attached resolution extending the time limitation by 45 days for all cases that meet the above criteria, and that have been before the Board for less than six months as of the date of the Board meeting.

GOVERNMENT CODE § 18671.1 RESOLUTION

WHEREAS, Section 18671.1 provides that, absent waiver by the appellant, the time period in which the Board must render its decision on a petition pending before it shall not exceed six months from the date the petition was filed or 90 days from the date of submission; and

WHEREAS, Section 18671.1 also provides for an extension of the time limitations by 45 additional days if the Board publishes substantial reasons for the need for the extension in its calendar prior to the conclusion of the six-month period; and

WHEREAS, the Agenda for the instant Board meeting included an item titled "Notice of Government Code § 18671.1 Resolution" which sets forth substantial reasons for utilizing that 45-day extension to extend the time to decide particular cases pending before the Board;

WHEREAS, there are currently pending before the Board cases that have required multiple days of hearing and/or that have been delayed by unusual circumstances or by acts or omissions of the parties themselves;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the time limitations set forth in Government Code section 18671.1 are hereby extended an additional 45 days for all cases that have required multiple days of hearing or that have been delayed by acts or omissions of the parties or by unusual circumstances and that have been pending before the Board for less than six months as of the date this resolution is adopted.

* * * * *

Minutes - Page 15
October 21, 2003

I hereby certify that the State Personnel Board made and adopted the preceding resolution at its meeting on October 21, 2003.

VOTE: Elkins, Alvarado, Tom - Aye.

WALTER VAUGHN
Executive Officer
California State Personnel Board